

BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty  
Reduction-Early Termination of Probation  
of:

THERESA VAN VRANKEN  
32540 Eagleset Avenue  
Agua Dulce, California 91390

Physical Therapist License Number  
PT 23446

Respondent.

Case No. 1D-2006-64611

OAH No. N2006060642

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on August 3, 2006.

C. Lynn Thorpe, Deputy Attorney General, Health Quality Enforcement Section, Department of Justice, represented the People of the State of California.

Theresa Van Vranken appeared on her own behalf.

The record remained open for the submission of the original of a letter from Ms. Van Vranken's Diversion Program manager at Maximus. The letter was received August 10, 2006. The letter was appended to Exhibit 5, which was the copy the submission replaced. The record was closed and the matter was submitted on August 10, 2006.

**FACTUAL FINDINGS**

1. The Administrative Law Judge was assigned by the Physical Therapy Board of California (the Board) to hear and decide this matter pursuant to Business and Professions Code section 2661.7, subdivision (c). The Administrative Law Judge is duly designated in accordance with the provisions of Government Code section 11371. The Board has jurisdiction to terminate probation, or modify probationary conditions imposed upon any

physical therapist licensee of the Board in the State of California, depending upon proof of satisfactory rehabilitation.

2. The Board issued Physical Therapist License Number PT 23446 to Theresa Van Vranken, P.T., on August 31, 1998.

3. The Board revoked Ms. Van Vranken's license effective March 9, 2004. However, the revocation was stayed for a period of three years, and Ms. Van Vranken was placed on probation to the Board, subject to numerous terms and conditions. One of those conditions was that Ms. Van Vranken reimburse the Board its costs of investigation and prosecution in the amount of \$3,920, within 30 days of the effective date of the Decision, or arrange a suitable installment payment plan. Another term required Ms. Van Vranken to enroll in and successfully participate in the Board's Diversion Program until released. The disciplinary action was the result of Ms. Van Vranken's 2001 convictions for misdemeanor driving under the influence and misdemeanor hit and run causing property damage. She was previously convicted of driving under the influence in 1986 or 1987. The Decision imposing the disciplinary action noted Mr. Van Vranken was on criminal probation until December 2004.

4. Ms. Van Vranken filed her Petition for Penalty Relief-Early Termination of Probation (the Petition) with the Board on March 20, 2006. Probation expires by its own terms on March 9, 2007, assuming successful completion of all probationary conditions. As of the date of the filing, Ms. Van Vranken had completed two weeks more than two years of her three-year probation. Approximately five years have passed since the last acts resulting in the disciplinary action leading to the probation.

5. Ms. Van Vranken has been employed as a physical therapist with the Los Angeles Unified School District (LAUSD) since 1998. She provides physical therapy services for special education students who are mentally retarded or have severe mental or physical disabilities. Her job is to assist these disabled students with physical access to the District's curriculum. The job is largely physical but also involves considerable parent and caretaker coaching.

6. After the convictions that led to the disciplinary action against her, Ms. Van Vranken advised her supervisor at LAUSD of her conduct, of the requirements being placed on her by the criminal courts and the nature of her recovery program. Her supervisors met and decided to closely supervise her work for the following two-year period. That close supervision period was ended successfully before the Board took action against her license. Ms. Van Vranken expressed "shock" at facing the disciplinary action after her employer had just ended a close supervision of her work, and after reassuring her that she was safe and fit to continue working with the District's students.

7. Ms. Van Vranken has completed the Mothers Against Drunk Driving (MADD) and HARM rehabilitation programs, as well as the RIGHT ON outpatient rehabilitation program. At the time of her convictions, she was already obtaining counseling

from a psychologist for help with interpersonal relationships and developing coping skills. After the conviction, she continued with the counseling, adding sobriety support issues, and began seeing a psychiatrist for medication management. She began and continues to attend a 12 Step group and a nurse's support group, even though continued attendance in these groups is no longer required. She submitted a letter of support from her 12 Step group sponsor in evidence. The letter attests to the strength of Ms. Van Vranken's sobriety and her commitment to seeking help from her support group when she faces stress instead of turning back to alcohol.

8. Ms. Van Vranken entered the Board's Diversion Program, administered by Maximus, and has performed well enough that she has been endorsed for the program's transition phase, beginning June 20, 2006. According to the hearsay letter from Ms. Van Vranken's Diversion Program Manager in evidence, transition is an approximately one-year program during which some Diversion program restrictions are removed or relaxed. Ms. Van Vranken is still subject to submitting monthly reports, random bodily fluids testing, continuing supervision by her work site monitor with reports from the monitor to the program manager, and a monthly meeting with her clinical case manager. It was noted that the original of the letter submitted on August 10, 2006, referenced in the preamble above, lacks a portion of a sentence that appears in the faxed copy that was originally submitted in evidence. The missing portion of the sentence in the alleged original that appears in the faxed copy reads, "Regardless of her probation status with her licensing Board, if Theresa relapses during her transition period or demonstrates cause [start missing portion] "to believe she is a risk to public safety, MAXIMUS will suspend her from employment immediately and will notify the Board of the situation." From this letter, it appears that if Ms. Van Vranken continues in transition until its anticipated end, as identified in the letter, her Board probation will end before she has completed all of the transition. There was no independent corroboration of the statements made in the letter regarding the consequences to Ms. Van Vranken if she relapses after her probation is terminated but she is still subject to the Diversion Program's supervision. There is no evidence that LAUSD is required to suspend or terminate Ms. Van Vranken upon receipt of an adverse report from Maximus. The letter's final comment, that Ms. Van Vranken is currently in full compliance with all the requirements of her Diversion program, was not disputed.

9. Ms. Van Vranken offered an impressive array of letters of support from key persons in her workplace and in her recovery. Letters from her psychologist and psychiatrist are each supportive of a termination of probation and praise her for her attention to an honest commitment to live a healthy and sober life. Her psychiatrist noted she maintains excellent compliance with her medications and treatment program, and that she has remained stable and sober since the summer of 2003.

10. Ms. Jordan, the LAUSD Coordinator of Physical and Occupational Therapy for the Special Education Programs of the District, is Ms. Van Vranken's direct workplace supervisor. Ms. Jordan also serves as worksite monitor at LAUSD for the Diversion Program. In this capacity, she is required to monitor, evaluate and report on a variety of Ms. Van Vranken's work activities, including work performance, attendance, punctuality, and

interactions with colleagues, staff and students. Ms. Jordan wrote that Ms. Van Vranken has “regained” her trust and has always been honest and forthright about the incident leading to the action against her. Ms. Jordan noted Ms. Van Vranken’s work performance is excellent and that she has maintained her professional, ethical and workplace responsibilities very well despite some significant obstacles. Ms. Jordan noted that Ms. Van Vranken’s colleagues, school site personnel, students and parents all enjoy working with her. In that vein, there are two additional letters of reference in evidence from other physical therapists who work with or supervise her activities. Each commented that Ms. Van Vranken is responsible, dependable, skillful and efficient in her work, and devoted to the children she serves.

11. It was not disputed that Ms. Van Vranken has not fully paid the costs obligation imposed by the probationary terms of the disciplinary decision. As of the date of the evidentiary hearing, unpaid costs amounted to \$1,437.50. Ms. Van Vranken initially entered into an installment payment plan with the Board. She made an initial payment of \$1,292.50 in 2004 and the \$1,000 payment in 2005. But she was not able to consistently follow through when she encountered financial problems in 2005. She lost a home she hoped to purchase and was homeless for a short period. She found a mobile home and rented land where she could keep her animals, which she considers her family. One of the animals required significant veterinary care, taking the money she had otherwise allocated to make the payments to the Board. In her closing statement, she requested the Board forgive the remaining obligation.

12. Ms. Van Vranken noted that compliance with probation takes a good deal of energy and financial resources. She acknowledged there is no particular term of probation that restricts her at work. But she testified that the random drug testing required by the Diversion Program has cost her \$5,500. She quickly pointed out that she understands the need for the requirement and does not object to having the tests. But she has been tested approximately 24 times per year, with seven or eight retests due to low creatinine levels, at \$47 per test, and has found the cost is becoming difficult. She urged the Board to exercise its discretion to terminate the requirement that she continue in Diversion, and contended that her probation condition gives the Board the discretion to determine for itself whether to continue that term.

## LEGAL CONCLUSIONS

1. Government Code section 11522 provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. Business and Professions Code section 2661.7 provides that a person whose license or approval has been revoked or suspended, or who has been placed on probation, may petition the Physical Therapy Board of California for reinstatement or modification of penalty, including modification or termination of probation, after a certain periods of time pass. The petition may be heard by the board or may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the committee that shall be acted upon in accordance with the Administrative Procedure Act. The board or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

3. California Code of Regulations, title 16, section 1399.21 provides as follows:

When considering the denial of a license, under Section 480 of the code or a petition for reinstatement under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

4. The Administrative Law Judge carefully considered all the evidence presented in this matter against the Board's criteria of rehabilitation. Ms. Van Vranken is substantially rehabilitated. She has made praiseworthy efforts to get her substance abuse and other problems under control and her recovery and treatment plans appear solid and well

supervised. The evidence is significant that she is a competent, safe and attentive provider of physical therapy services in her workplace. But she has not yet completed two conditions of her probation. Ms. Van Vranken frankly acknowledges she has not completed the term of her probation that requires full cost recovery, and seeks here forgiveness of that obligation. There is no compelling evidence that such forgiveness is warranted or appropriate. Second, she seeks to exit the Diversion Program's transition phase before that program has determined it is appropriate for her recovery. Her case manager has determined that Ms. Van Vranken is a suitable candidate to transition out of Diversion, and has relaxed many of the program requirements. But that decision was made in late June 2006, and there is no evidence that intervening here to shorten the transition period would be a prudent exercise of the Board's discretion, particularly since there is no evidence warranting such substitution of the Board's judgment for that of those working closely with Ms. Van Vranken to monitor her sobriety and recovery. Ms. Van Vranken's recovery, although solid, is still relatively recent. Her psychiatrist noted in his letter that she has been stable since the summer of 2003. Ms. Van Vranken's case manager at Maximus is in a far better position to assess the suitability of early release from transition than is the Board at this time. Deference to Maximus and Ms. Van Vranken's case manager in the Diversion Program is still warranted here

7. Probation imposes limitations and burdens, and carries sometimes difficult costs. Good performance and full satisfaction of all probationary terms and conditions is expected. Should the Diversion Program discharge Ms. Van Vranken from the transition before probation expires by its own terms, and the costs are fully paid, probation will be terminated at that time. Otherwise, all the terms and conditions of probation are not yet fulfilled, and probation will continue until those obligations are satisfied.

## ORDER

The Petition of Theresa L. Van Vranken, P.T., for an Early Termination of Probation is GRANTED IN PART AND DENIED IN PART. Upon the Board's receipt of satisfactory and persuasive evidence from Ms. Van Vranken that she has fully satisfied and paid all outstanding costs, as set forth above, and an unconditional discharge by Maximus of Ms. Van Vranken from the Diversion Program, the Petition shall be granted. If the conditions are not satisfied during the period probation is still in effect, the Petition is DENIED.

DATED: \_\_\_\_\_

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STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings